

Regular Session, 2010

SENATE BILL NO. 625

BY SENATOR MARTINY AND REPRESENTATIVE LIGI

CONTRACTS. Prohibits certain indemnity provisions in certain motor carrier transportation contracts and certain construction contracts. (1/1/11)

AN ACT

To enact R.S. 9:2780.1, relative to contracts; to provide relative to motor carrier transportation contracts; to provide relative to construction contracts; to provide relative to liability provisions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:2780.1 is hereby enacted to read as follows:

§2780.1. Certain contract provisions invalid; motor carrier transportation contracts; construction contracts

A. For purposes of this Section, the following terms have the meanings ascribed to them by this Subsection, except where the context clearly indicates otherwise:

(1) "Motor carrier transportation contract" shall mean any contract, agreement, or understanding covering the transportation of property, other than agricultural products as defined in R.S. 9:3306 and timber, for compensation or hire by a motor carrier, entrance upon property by the motor carrier for the purpose of loading, unloading, or transporting property, other than agricultural products as defined in R.S. 9:3306 and timber, for

1 compensation or hire, or a service incidental to any such activity, including but
2 not limited to storage of property, other than agricultural products as defined
3 in R.S. 9:3306 and timber, except the Uniform Intermodal Interchange and
4 Facilities Access Agreement administered by the Intermodal Association of
5 North America or other agreements providing for the interchange, use or
6 possession of intermodal chassis, containers, or other intermodal equipment.

7 (2)(a) "Construction contract" shall mean any agreement for the design,
8 construction, alteration, renovation, repair, or maintenance of a building,
9 structure, highway, road, bridge, water line, sewer line, oil line, gas line,
10 appurtenance or other improvement to real property, including any moving,
11 demolition, or excavation, except that no deed, lease, easement, license, or other
12 instrument granting an interest in or the right to possess property will be
13 deemed to be a construction contract even if the instrument includes the right
14 to design, construct, alter, renovate, repair or maintain improvements on such
15 real property.

16 (b) "Construction contract" shall not include any design, construction,
17 alteration, renovation, repair, or maintenance of the following:

18 (i) Any dirt or gravel road used to access oil and gas wells and associated
19 facilities.

20 (ii) Oil flow lines or gas gathering lines used in association with the
21 transportation of production from oil and gas wells from the point that oil and
22 gas becomes co-mingled for transportation to oil storage facilities or gas
23 transmission lines.

24 (3) "Indemnatee" means any named party in the contract to whom
25 indemnification is owed pursuant to the terms of the contract.

26 (4) "Indemnitor" means any party to the contract who obligates himself
27 to provide indemnification under the terms of the contract.

28 (5) "Third party" means any party not subject to the contractual
29 obligations between the indemnitee and indemnitor.

1 B. Notwithstanding any provision of law to the contrary, any provision,
2 clause, covenant, or agreement contained in, collateral to, or affecting a motor
3 carrier transportation contract or construction contract which purports to
4 indemnify, defend, or hold harmless, or has the effect of indemnifying,
5 defending, or holding harmless, the indemnitee from or against any liability for
6 loss or damage resulting from the negligence or intentional acts or omissions of
7 the indemnitee, an agent or employee of the indemnitee, or a third party over
8 which the indemnitor has no control is contrary to the public policy of this state
9 and is null, void, and unenforceable.

10 C. Notwithstanding any provision of law to the contrary, any provision,
11 clause, covenant, or agreement contained in, collateral to, or affecting a motor
12 carrier transportation contract or construction contract which purports to
13 require an indemnitor to procure liability insurance covering the acts or
14 omissions or both of the indemnitee, its employees or agents, or the acts or
15 omissions of a third party over whom the indemnitor has no control is null,
16 void, and unenforceable. However, nothing in this Section shall be construed
17 to prevent the indemnitee from requiring the indemnitor to provide proof of
18 insurance for obligations covered by the contract.

19 D. Notwithstanding any contractual provision to the contrary, the laws
20 of the state of Louisiana shall apply to and govern any construction contract to
21 be performed in this state and any motor carrier transportation contract
22 relative to loading or unloading activities, or any services incidental thereto,
23 which occur in this state. Any provision, covenant, or clause in such contracts
24 which conflicts with the provisions of this Section shall be null, void and
25 unenforceable.

26 E. The provisions of this Section are not intended to, nor shall they be
27 judicially interpreted, to alter, add to, subtract from, amend, overlap, or affect
28 the provisions of R.S. 9:2780 or R.S. 38:2195.

29 F. The provisions of this Section shall not apply to prohibited clauses in

1 **any motor carrier transportation contract and any construction contract**
 2 **entered into prior to January 1, 2011.**

3 Section 2. This Act shall become effective on January 1, 2011.

The original instrument was prepared by Sharon F. Lyles. The following digest, which does not constitute a part of the legislative instrument, was prepared by Michelle Broussard-Johnson.

DIGEST

Martiny (SB 625)

Proposed law defines a "motor carrier transportation contract" to mean any contract, agreement, or understanding covering the transportation of property, other than agricultural products as defined in present law and timber, for compensation or hire by a motor carrier, entrance upon property by the motor carrier for the purpose of loading, unloading, or transporting property, other than agricultural products as defined in present law and timber, for compensation or hire, or a service incidental to any such activity, including but not limited to storage or property, other than agricultural products as defined in present law and timber, except the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America, or other agreements providing for the interchange, use or possession of intermodal chassis, containers, or other intermodal equipment.

Proposed law defines a "construction contract" to mean any agreement for the design, construction, alteration, renovation, repair or maintenance of a building, structure, highway, road, bridge, water line, sewer line, oil line, gas line, appurtenance or other improvement to real property, including any moving, demolition or excavation, except that no deed, lease, easement, license, or other instrument granting an interest in or the right to possess property shall be deemed to be a construction contract even if the instrument includes the right to design, construct, alter, renovate, repair or maintain improvements on such real property.

Proposed law further provides that a "construction contract" shall not include any design, construction, alteration, renovation, repair, or maintenance of (i) dirt or gravel roads used to access oil and gas wells and associated facilities, or (ii) oil flow lines or gas gathering lines used in association with the transportation of production from oil and gas wells from the point that oil and gas becomes co-mingled for transportation to oil storage facilities or gas transmission lines.

Proposed law defines an "indemnitee" to mean any named party in the contract to whom indemnification is owed pursuant to the terms of the contract.

Proposed law defines an "indemnitor" to mean any party to the contract who obligates himself to provide indemnification under the terms of the contract.

Proposed law provides that any provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract or a construction contract that purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, the indemnitee from or against any liability for loss or damage where there is negligence or fault (strict liability) on the part of the indemnitee, or an agent or employee of the indemnitee, or an independent contractor over which the indemnitor has no control.

Proposed law provides any provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract or construction contract which purports to require an indemnitor to procure liability insurance covering the acts or

omissions or both of the indemnitee, its employees or agents, or the acts or omissions of a third party over whom the indemnitor has no control is null, void, and unenforceable. However, nothing in this Section shall be construed to prevent the indemnitee from requiring the indemnitor to provide proof of insurance for obligations covered by the contract.

Proposed law provides that Louisiana law applies to construction contracts performed in this state or motor carrier transportation contracts relative to loading or unloading activities, or any services incidental thereto, which occur in this state. Proposed law further provides that any provision, covenant, or clause in such contracts which conflicts with the provisions of proposed law shall be null, void and unenforceable.

Proposed law is not intended to, nor shall it be judicially interpreted, to alter, add to, subtract from, amend, overlap, or affect the provisions of certain oil field contracts or certain public contracts.

Proposed law shall not apply to prohibited clauses in any motor carrier transportation contract and any construction contract entered into prior to January 1, 2011.

Effective January 1, 2011.

(Adds R.S. 9:2780.1)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill.

1. Excludes agreements which provide for the interchange, use or possession of intermodal chassis, containers, or other intermodal equipment.
2. Defines "indemnitee."
3. Changes the terms "intentional acts" and "acts of omission of the indemnitee" to "fault (strict liability)."
4. Removes exemption for indemnification agreements that are part of compromise offers or settlements.
5. Makes the provisions to apply prospectively, only, to contracts entered into after January 1, 2011.

Senate Floor Amendments to reengrossed bill.

1. Excludes agricultural products from the definition of "motor carrier transportation contract".
2. Redefines "indemnitee".
3. Provides for the definition of "indemnitor" and "third party".
4. Provides for the procurement of liability insurance by indemnitors.